IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

TIMOTHY OLSON,

     Plaintiff,

  v.   **No. 13-cv-0724 SMV**

CAROLYN W. COLVIN, Acting Commissioner of
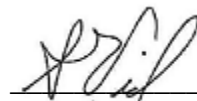**Social Security Administration,**

     Defendant.

ORDER GRANTING PLAINTIFF'S MOTION FOR ATTORNEY FEES UNDER EAJA

THIS MATTER is before the Court on Plaintiff's Motion for Attorney Fees under the Equal Access to Justice Act, 28 U.S.C. § 2412 [Doc. 33] and the Memorandum in Support [Doc. 34] (collectively, "Motion"), filed on September 16, 2014. Plaintiff requests attorney fees in the amount of $5,169.08. [Docs. 33, 34]. In her response [Doc. 35], the Commissioner does not object to Plaintiff's request for attorney fees. Accordingly, the Court, having considered the submissions of counsel, the record in this case, and the relevant law, and being otherwise fully advised in the premises, **FINDS** that the motion is well-taken and will be **GRANTED**.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Plaintiff's Motion for Attorney Fees under the Equal Access to Justice Act, 28 U.S.C. § 2412 [Doc. 33] is **GRANTED**, and Plaintiff Timothy Olson is authorized to receive **$5,169.08** for payment to his attorney for services before this Court, as permitted by the Equal Access to Justice Act, 28 U.S.C. § 2412, and in accordance with *Manning v. Astrue*, 510 F.3d 1246, 1255 (10th Cir. 2007).

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IT IS FURTHER ORDERED that if Plaintiff's counsel is ultimately granted attorney fees pursuant to 42 U.S.C. § 406(b) of the Social Security Act, counsel shall refund the smaller award to Plaintiff pursuant to *Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002) ("Congress harmonized fees payable by the Government under EAJA with fees payable under § 406(b) out of the claimant's past-due Social Security benefits in this manner: Fee awards may be made under both prescriptions, but the claimant's attorney must refun[d] to the claimant the amount of the smaller fee.") (internal quotation marks omitted).

IT IS SO ORDERED.

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STEPHAN M. VIDMAR
United States Magistrate Judge
Presiding by Consent